## REMARKS/ARGUMENTS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith, which place the application into condition for allowance. The present amendment is being made to facilitate prosecution of the application.

## I.    STATUS OF THE CLAIMS AND FORMAL MATTERS.

Claims 3, 4, 6 and 13-20 are pending. Claims 13 and 16-19 are independent. Claims 3, 6, 13 and 15-19 are hereby amended. No new matter has been introduced. It is submitted that these claims, as originally presented, were in full compliance with the requirements of 35 U.S.C. §112. Changes to claims are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

Claims 4, 6, 13 and 15-19, which were rejected under 35 U.S.C. §112, second paragraph, have been amended thereby obviating the rejection.

## II.    REJECTIONS UNDER 35 U.S.C. §102(b) and §103(a)

Claims 3, 13, 14 and 16 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 5,717,641 to Ando, et al. (hereinafter, merely "Ando").

Claims 4, 6 and 15 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Ando in view of U.S. Patent No. 6,687,384 to Isnardi (hereinafter, merely "Isnardi").

Claims 17-20 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable

over Ando in view of Official Notice.

Claim 13 recites, *inter alia:*

"An encoding apparatus…comprising:

An encoding apparatus for encoding picture data, comprising:

**a multiplexer for multiplexing input video and audio
streams**;

**a source packetizer for encoding an input multiplexed
stream into an AV stream composed of source packets in
accordance with an application format of a recording medium
on which to record the AV stream**;

**said controller setting a multiplexing bitrate of a
transport stream and an average bitrate of video encoding,
controlling the encoder so that a video stream is encoded at a
variable bitrate such that a preset average bitrate is
guaranteed from one preset time domain to another,
controlling the multiplexer so as not to produce a null-packet
in case there is no elementary stream to be rendered into a
transport packet and appending an arrival stamp to each
transport packet to form a source packet by controlling the
source packetizer**." (Emphasis added)

As understood by Applicants, Ando relates to storing at least a set of coded real-

time data having packets respectively having variable coding data rates per a predetermined

interval in a data memory, detecting a maximum among the variable coding data rates, storing

data of the maximum in a control data memory, selectively reading at least the see of coded real-

time data in response to a demand, adding dummy data to read at least the set of coded real-time

data such that the resultant data has a fixed data rate equal to or more than the data of maximum

from the control data memory per the predetermined interval and outputting the resultant data.

As understood by Applicants, Isnardi relates to embedding data in an encoded

video bitstream, wherein the bitstream includes redundantly coded syntax element values of

which one is an overriding value, includes mandatorily coding the syntax element overriding

value and replacing the non-overriding syntax element value with the data to be embedded.

Applicants respectfully submit that Ando and Isnardi, taken either alone or in

combination, fail to teach or suggest the above-identified features of claim 13. Specifically,

there is no teaching or suggestion of an encoding apparatus comprising a multiplexer for

multiplexing input video and audio streams, a source packetizer for encoding an input

multiplexed stream into an AV stream composed of source packets in accordance with an

application format of a recording medium on which to record the AV stream and a controller for

setting a multiplexing bitrate of a transport stream and an average bitrate of video encoding,

controlling the encoder so that a video stream is encoded at a variable bitrate such that a preset

average bitrate is guaranteed from one preset time domain to another, controlling the multiplexer

so as not to produce a null-packet in case there is no elementary stream to be rendered into a

transport packet and appending an arrival stamp to each transport packet to form a source packet

by controlling the source packetizer, as recited in claim 13.

Therefore, Applicants submit that independent claim 13 is patentable.

For reasons similar to, or somewhat similar to, those described above with regard

to independent claim 13, independent claims 16-19 are also believed to be patentable.

## III.    DEPENDENT CLAIMS

The other claims are dependent from one of the independent claims, discussed

above, and are therefore believed patentable for at least the same reasons. Since each dependent

claim is also deemed to define an additional aspect of the invention, however, the individual

reconsideration of the patentability of each on its own merits is respectfully requested.

U.S. Appln. No. 10/018,836
Reply to Office Action dated November 20, 2006
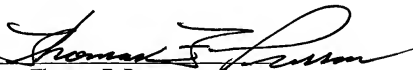
PATENT
450101-03301

## CONCLUSION

In the event the Examiner disagrees with any of statements appearing above with respect to the disclosure in the cited reference or references, it is respectfully requested that the Examiner specifically indicate those portions of the reference or references providing the basis for a contrary view.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By

Thomas F. Presson
Reg. No. 41,442
(212) 588-0800

00424977